

Message Text

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PAGE 01 GENEVA 05822 01 OF 02 181503Z
ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01
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EB-08 EPA-01 SOE-02 DOE-15 FMC-01 TRSE-00 H-01
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OES-07 OMB-01 PA-01 PM-05 SP-02 SS-15 ICA-11
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TO SECSTATE WASHDC 8521

C O N F I D E N T I A L SECTION 01 OF 02 GENEVA 05822

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LAW OF THE SEA - MARINE ENVIRONMENT INITIATIVES

D/LOS PASS TO INTERESTED CONGRESSIONAL MEMBERS

1. SUMMARY: DISCUSSIONS TO DATE HAVE ELICITED LITTLE SUPPORT FOR FURTHER NEGOTIATIONS ON THE POLLUTION PROVISIONS. FRANCE SEEKS CLARIFICATION OF INTERVENTION FOLLOWING A MARITIME CASUALTY. UK, USSR, AND TO A LESSER EXTENT JAPAN, SAY THEY WILL CONSIDER AMENDMENTS TO RESOLVE AMOCO CADIZ-TYPE PROBLEMS, BUT DO NOT SUPPORT REOPENING OTHER ASPECTS OF POLLUTION TEXT. CANADA PREDICTABLY IS ENTHUSIASTIC IN ITS SUPPORT, BUT ITS CONTINUING ATTEMPTS TO REOPEN ISSUE OF CONSTRUCTION STANDARDS IN TERRITORIAL SEA DIRECTLY ADDS CREDIBILITY TO "PANDORA'S BOX" ARGUMENT OF OPPONENTS TO REOPENING POLLUTION NEGOTIATIONS IN GENERAL. NORWAY AND FRG REACT NEGATIVELY TO REOPENING ICNT POLLUTION PROVISIONS. DISCUSSIONS WILL BE BROADENED TO OTHER DELS IN COMING DAYS, BUT MOST LDC'S SEEM TO FEEL EXISTING TEXT IS ALL RIGHT. END SUMMARY.

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PAGE 02 GENEVA 05822 01 OF 02 181503Z

2. DURING APRIL 13 BILATERAL SOVIETS STRESSED DANGERS OF REOPENING POLLUTION ARTICLES AND GENERAL UNWILLINGNESS TO CONSIDER ANY U.S. PROPOSAL. DESPITE GENERAL RESERVATION, A DETAILED DISCUSSION OCCURRED WITH SOVIETS INDICATING THAT A PROPERLY DRAFTED NOTICE PROVISION MIGHT BE ACCEPTABLE. WITH REGARD TO CLARIFYING THE RIGHT TO INTERVENE AFTER A MARITIME CASUALTY, THE USSR INDICATED IT WOULD GIVE GREAT

DEFERENCE TO VIEWS OF FRANCE. WHILE INDICATING NO WILLINGNESS TO MOVE ON ARREST ARTICLE, SOVIETS DID NOT CLOSE DOOR TO ADDING "OR THREAT OF MAJOR DAMAGE" AS AN EXCEPTION TO FLAG-STATE PRE-EMPTION.

3. SOVIETS LED OFF 14 APRIL MEETING OF G-5 EXPERTS BY STATING THAT AMENDMENTS TO COMMITTEE III TEXT OF ICNT COULD WELL LEAD TO AN OVERALL UNACCEPTABLE TEXT AND SAID FURTHER NEGOTIATIONS WERE UNDESIRABLE. FRANCE, WHILE INDICATING UNDERSTANDING OF SOVIET VIEW, SAID ICNT WAS UNACCEPTABLE AND VARIOUS AMENDMENTS, INCLUDING U.S., NEED TO BE EXAMINED. THE U.K. EXPRESSED WISH NOT TO UPSET ICNT BALANCE, BUT UNDERSTOOD FRENCH CONCERN AND WANTED TO SEE OTHER FRENCH PROPOSALS BEFORE EXPRESSING A VIEW. JAPAN SAID IT WAS UNHAPPY ABOUT EFFORTS TO REOPEN ICNT AND IF IT WERE ACCOMPLISHED, THEY MIGHT HAVE SOME AMENDMENTS OF THEIR OWN. THE SOVIETS REJOINED BY POINTING OUT REPORTED SEPARATE EFFORTS OF CANADA AND AFRICANS, LED BY KENYA, TO AMEND ICNT. THE USSR ANNOUNCED WILLINGNESS TO CONSIDER SOLELY ARTICLES DEALING WITH PROBLEMS CREATED BY AMOCO CADIZ. FRANCE REPLIED IT HAD PROBLEMS OTHER THAN THOSE RESULTING FROM THIS TRAGEDY.

4. FRENCH AMENDMENTS TO ICNT WERE ORALLY PRESENTED AND RELATED STRONGLY TO INTERVENTION ARTICLE (222). UNDER FRENCH PROPOSAL, THE DEFINITION OF A "MARITIME CASUALTY" WOULD BE EXPANDED TO INCLUDE EVENTS CAUSING DAMAGE OR CONFIDENTIAL

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PAGE 03 GENEVA 05822 01 OF 02 181503Z

THREAT OF DAMAGE TO THE "MARINE ENVIRONMENT" -- NOT TO COASTLINE OR RELATED INTERESTS. FRANCE ALSO STATED THEY WOULD PURSUE IN IMCO A REQUIREMENT FOR VESSELS CARRYING DANGEROUS SUBSTANCES TO ANNOUNCE THEIR ENTRY IN CERTAIN COASTAL WATERS AND TO NOTIFY THE COASTAL STATE OF OCCURRENCES ON BOARD THE VESSEL WHICH MAY RESULT IN ITS NO LONGER BEING UNDER CONTROL. FRENCH DO NOT PROPOSE AMENDING 1969 CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS. FRANCE WILL ALSO SEEK IMCO SANCTION OF COASTAL STATE TUG REQUIREMENTS IF CONTRACT NEGOTIATIONS DELAY RESTORING CONTROL OF DISABLED VESSEL.

5. ON POOLING OF PORT ENTRY REQUIREMENTS BY STATES IN THE REGION, FRANCE WAS MOST SUPPORTIVE, BUT WOULD LIMIT PORT ENTRY STANDARDS TO INTERNATIONAL STANDARDS AS REGARDS CONSTRUCTION DESIGN, EQUIPMENT AND MANNING (CDEM). JAPAN AND USSR ATTACKED CONCEPT AS A REAL IMPEDIMENT TO TRADE WHILE U.K. SUGGESTED REPEATING LANGUAGE FROM ARTICLE 21 (2) IN THIS NEW ARTICLE ACHIEVING ESSENTIALLY SAME RESULT AS FRENCH PROPOSAL, ALTHOUGH FRENCH PREPARED TO BASE THIS ON "INTERNATIONALLY ELABORATED" STANDARDS THAT WERE NOT YET IN EFFECT OR GENERALLY ACCEPTED.

6. ALL AGREED THAT INTENT OF ICNT WAS THAT COASTAL STATES HAD RIGHT TO SET DISCHARGE STANDARDS IN THE TERRITORIAL SEA. GENERAL REACTION TO U.S. PROPOSAL TO CLARIFY THIS INTENT WAS THAT IT WAS UNNECESSARY AND POSSIBLE DANGEROUS.

7. EXTENDED DISCUSSION OF ARREST RIGHTS IN ECONOMIC ZONE (221(6)) LED TO CLARIFICATION THAT IN FRENCH AND SPANISH, THE WORD "FLAGRANT" MEANS ESSENTIALLY BEING CAUGHT RED-HANDED. THIS IN TURN LEAD TO DISCUSSION OF SEVERAL PROPO-

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PAGE 01 GENEVA 05822 02 OF 02 181540Z

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C O N F I D E N T I A L SECTION 02 OF 02 GENEVA 05822

SALS TO FIND AN ENGLISH EQUIVALENT OF FLAGRANT. THE USSR SUGGESTED, "WITHOUT PREJUDICE TO ITS VIEWS ON ANY CHANGES IN THE ARTICLE," MAINTAINING "GROSS VIOLATION" ADDING A QUALIFIER BEFORE "DISCHARGE" AND RETAINING "MAJOR." U.K. SUGGESTED AS A PERSONAL THOUGHT DELETING ALL ADJECTIVES BEFORE "VIOLATION," ADDING "SUBSTANTIAL" BEFORE "DISCHARGE" AND RETAINING "MAJOR" BEFORE DAMAGE OR THREAT TO DAMAGE.

8. ON FLAG-STATE PREEMPTION, JAPAN AND U.K. SAW LINK BETWEEN THIS AND ENFORCEMENT ARTICLE ARGUING THAT TO THE EXTENT COASTAL STATE OBTAINS GREATER ENFORCEMENT RIGHTS, THERE MUST BE GREATER PREEMPTION RIGHT FOR FLAG STATE. JAPAN INDICATED A POSSIBLE WILLINGNESS TO ADD "THREAT OF MAJOR DAMAGE" BUT REJECTED WITH THE U.K., U.S. PROPOSED AMENDMENT EXCLUDING PREEMPTION FOR VIOLATIONS IN THE ECONOMIC ZONE. U.K. CHARACTERIZED AMENDMENT ON THREAT OF MAJOR DAMAGE AS LESS UNACCEPTABLE. USSR SAID SIMPLY U.S. PROPOSALS WERE UNACCEPTABLE.

9. WITH RESPECT TO U.S. PROPOSAL REGARDING OTHER THAN
MONETARY PENALTIES ON THE TERRITORIAL SEA (ARTICLE 231),
JAPAN SEEMED TO EXPRESS WILLINGNESS TO ACCEPT OUR AMEND-
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PAGE 02 GENEVA 05822 02 OF 02 181540Z

MENT WHILE U.K. ARGUING TRADE UNION PROBLEMS INSISTED ON
MAINTAINING THE ICNT. FRANCE SUPPORTED U.S. PROPOSAL.
SOVIETS WOULD DELETE "OR TERRITORIAL SEA" FROM U.S.
PROPOSAL WITH THE EFFECT THAT IMPRISONMENT AND OTHER FORMS
OF CORPORAL PUNISHMENT WOULD BE PRECLUDED BUT ALL OTHER
PENALTIES WOULD REMAIN AVAILABLE. POSSIBLE MIDDLE GROUND
SUGGESTED WAS TO FOLLOW USSR PROPOSAL BUT ALLOW IMPRISON-
MENT FOR OFFENSES FROM VESSELS NOT IN INNOCENT PASSAGE --
THOSE WHICH HAVE COMMITTED A WILLFUL AND SERIOUS ACT OF
POLLUTION. G-5 EXPERTS GROUP TO MEET AGAIN WEDNESDAY,
APRIL 19.

10. CONSULTATIONS WITH CANADA HAVE RESULTED IN AN ASSURANCE
FROM BEESLEY THAT CANADA WILL NOT SEEK TO REOPEN STRAITS
ARTICLE. WALSH FROM THEIR DEPARTMENT OF ENVIRONMENT HAS
STATED THAT THEY WOULD LIMIT THEMSELVES TO THE U.S. PRO-
POSALS PLUS MODIFICATION OF ARTICLE 21, PARAGRAPH 2. CLOSE
CONSULTATIONS WITH CANADA CONTINUE IN AN EFFORT TO INSURE
NEGOTIATIONS REMAIN CONTAINED.

11. NORWAY'S REACTION TO GENERAL EXPLORATION HAS BEEN
NEGATIVE WITH ALL SORTS OF SUGGESTIONS TO MEET CONCERN
SHORT OF ALTERING ICNT PROVISIONS. FRG HAS SIMILAR VIEW,
BUT REMAINS WILLING TO EXPLORE POSSIBLE IMPROVEMENTS TO
COASTAL STATE RIGHTS IN THE TERRITORIAL SEA.
RICHARDSON

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